



DEPARTMENT OF THE AIR FORCE
WASHINGTON, DC

JUN 30 1998

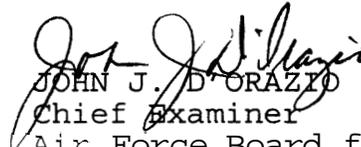
Office of the Assistant Secretary

AFBCMR 98-00068

MEMORANDUM FOR THE CHIEF OF STAFF

Under the authority of Section 1552, Title 10, United States Code and Air Force Instruction 36-2603, and having assured compliance with the provisions of the above regulation, the decision of the Air Force Board for Correction of Military Records is announced, and it is directed that:

The pertinent military records of the Department of the Air Force relating to [REDACTED] be corrected to show that on 18 October 1995, he changed his Survivor Benefit Plan (SBP) election from spouse coverage to former spouse coverage based on reduced retired pay, naming [REDACTED] as the former spouse beneficiary.


JOHN J. D'ORAZIO
Chief Examiner
Air Force Board for Correction
of Military Records



DEPARTMENT OF THE AIR FORCE
WASHINGTON, DC

JUN 30 1998

Office of the Assistant Secretary

AFBCMR 98-00068

MEMORANDUM OF CONSIDERATION OF APPLICATION BEFORE THE AFBCMR

SUBJECT: [REDACTED]

Having carefully reviewed this application, we agree with the recommendation of the Air Force office of primary responsibility and adopt the rationale expressed as the basis for our decision that the applicant has been the victim of either an error or an injustice. Therefore, under the authority delegated in AFI 36-2603, the applicant's records will be corrected as set forth in the accompanying Memorandum for the Chief of Staff signed by the Executive Director of the Board or his designee.


Panel Chair

Attachment:
Ltr, HQ AFPC/DPPT, dtd May 21, 1998,
w/Atch



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS AIR FORCE PERSONNEL CENTER
RANDOLPH AIR FORCE BASE TEXAS

21 MAY 1999

MEMORANDUM FOR AFBCMR

FROM: HQ AFPC/DPPTR
550 C Street West Ste 11
Randolph AFB TX 78150-4713

SUBJECT: Application for Correction of Military Records

Reference: [REDACTED]

Requested Correction: The applicant is requesting corrective action to show he elected former spouse coverage based on a reduced amount of retired pay under the Survivor Benefit Plan (SBP) to comply with the court order.

Basis for Request: The applicant claims his ignorance of the law and misinformation provided by personnel at Maxwell AFB AL caused this error.

Background: A spouse's eligibility to receive an annuity terminates upon divorce. However, the law provides two mechanisms for changing spouse to former spouse coverage. Both must be exercised within the first year following divorce: the retiree may file an election change, or the former spouse may request the retiree be deemed to have made such a change on his or her behalf. In the latter case, the former spouse must provide legal documentation that the member agreed, or the court ordered the member, to establish former spouse coverage. If neither the member nor former spouse requests the election change within the one-year eligibility period, former spouse coverage may not be established thereafter. Even though SBP premiums continue to be deducted from the member's retired pay following divorce, the former spouse is not entitled to receive the annuity in the event of the member's death.

Facts: The member elected spouse only coverage based on a reduced level of retired pay prior to his 1 Jun 90 retirement and his wife concurred in the election. The parties divorced on 30 Jun 95; the divorce decree was later amended (17 Oct 95) requiring SBP coverage be continued. However, neither the applicant nor his former spouse submitted a valid election change during the required time limit. The member claims that when he sought assistance in converting to former spouse coverage he was miscounseled and advised to keep spouse coverage with his former spouse as the beneficiary. Premiums continued to be deducted from his retired pay until Jan 98 when the Defense Finance and Accounting Service - Cleveland Center (DFAS-CL) updated his records, suspended SBP costs, and refunded the premiums retroactive to the date of divorce.

9800068

Discussion: Even though the member did not make a valid former spouse election change, there is no evidence he requested coverage for her be terminated. To deny this request would be to deny his former spouse an asset awarded to her by the court.

Recommendation: Although there is no evidence of Air Force error, to preclude a possible injustice, we recommend the member's record be corrected to reflect on 18 Oct 95 he elected former spouse coverage based on the reduced level of retired pay in effect on that date, naming [REDACTED] approval should be contingent upon recoupment of any applicable premiums.



PAT PEEK, **DAFC**

Chief, Retiree Services Branch

Directorate of Pers Program Mgt

9800068